

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

TESTA’S LEASING, INC.,

Plaintiff,

v.

POMONA LANE PARTNERS LLC and
ADAM MARLIN,

Defendants.

Case No.:

COMPLAINT

Plaintiff Testa’s Leasing, Inc. (“Plaintiff”), through counsel, files this complaint against Pomona Lane Partners LLC (“Pomona”) and Adam Marlin (“Marlin,” together with Pomona, “Defendants”) for breach of contract in excess of \$75,000, where Plaintiff is a North Carolina corporation, Pomona is a New York limited liability company located in New York, and Marlin is a New York resident.

THE PARTIES

1. Plaintiff is a corporation, formed and existing under the laws of North Carolina, with its principal place of business in North Carolina.
2. Pomona is a limited liability company, formed and existing under the laws of New York, with its principal place of business in Rockland County, New York.
3. Upon information and belief, Marlin is a citizen and resident of Rockland County, New York, and is the managing member and principal of Pomona.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) as the claim exceeds \$75,000.00 and is between residents of different states.

5. Venue is proper within the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(1) as Defendant resides within this district.

FACTS

6. Plaintiff owned and operated an Aaron's rent-to-own store located in State College, Pennsylvania.

7. On or about December 17, 2015, Plaintiff and Pomona entered into an agreement and an addendum (collectively, the "Contract") for the sale of the State College Aaron's store, which included a sale of the assets owned by Plaintiff and related to the operation of the store, as well as a transfer of the lease for the store's location.

8. The Contract includes a New York choice of law provision and a New York choice of venue provision.

9. In conjunction with Pomona executing the Contract, Marlin executed a payment and performance guarantee (the "Guarantee") guaranteeing the performance of all obligations of Pomona with respect to Plaintiff, including the payment of all amounts owed by Pomona to Plaintiff.

10. The Contract includes a purchase price of \$900,000.00 with an initial payment of \$88,000.00, and with the balance of the purchase price to be paid over a 48 month period and incurring interest at the rate of seven percent per year, and less any agreed upon credits.

11. Separately, on or about December 21, 2015, Pomona executed a promissory note in the principal amount of \$385,062.14 (the "Note") which had the first payment due in March 2016 and called for 12 interest only payments, followed by 36 equal monthly payments for the balance of the Note with interest at a rate of seven percent per year, and a default interest rate of eleven percent per year.

12. The original principal balance of the Note reflected the outstanding balance owed by Pomona to Plaintiff under the Contract, which amounts were guaranteed by Marlin pursuant to the Guarantee.

13. The Note includes an optional acceleration provision in the event of a payment default by Pomona and permits Plaintiff to recover its attorney's fees.

14. Defendants made a series of interest only payments totaling \$57,496.56, with a final payment of \$100.00 received by Plaintiff in June 2018.

15. Defendants made no payments toward the principal amount owed pursuant to the Note.

16. Defendants have failed and refused to make the remaining payments in accordance with the terms of the Note.

17. To the extent necessary, and to the extent the Note has not already been accelerated, by filing this action, Plaintiff intends to accelerate and does accelerate the balance owed under the Note by Pomona and guaranteed by Marlin.

FIRST CAUSE OF ACTION
(Breach of Contract)

18. The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

19. Plaintiff entered into the Contract with Pomona for the sale of a business, which is a valid, legal, and binding contract.

20. The Contract called for the payment of the balance owed by Pomona over time, which is reflected by the subsequent Note executed by Pomona.

21. The Note is a valid, legal, and binding contract.

22. Marlin entered into the Guarantee, thereby personally guaranteeing all obligations

of Pomona under the Contract, as well as all amounts due and owing from Pomona to Plaintiff.

23. The Guarantee is a valid, legal, and binding contract.

24. Pomona breached the Contract and the Note by failing to make the agreed upon payments.

25. Marlin breached the Guarantee by failing to make the payments that Pomona failed to make.

26. As a direct, proximate, and foreseeable result of Pomona's breaches of the Contract and the Note, and Marlin's breach of the Guarantee, Plaintiff has been damaged in the principal amount of \$385,062.14 plus interest (both accrued and continuing to accrue), as well as by the amount it has and will expend in attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, having fully complained of Defendants, Plaintiff respectfully requests that this Court:

1. Award Plaintiff a judgment in its favor against Defendants, jointly and severally, in the principal amount of \$385,062.14 plus accrued interest;

2. Award Plaintiff pre-judgment and post-judgment interest on any and all amounts owed by Defendants to Plaintiff, to the maximum extent permitted by contract and by law;

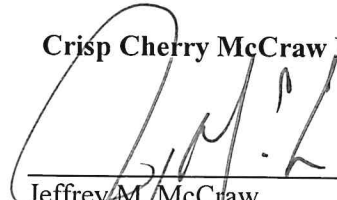
3. Award Plaintiff its attorneys' fees in pursuing this action in an amount to be determined;

4. Tax all the costs of this action against Defendants; and

5. Provide such other and further relief as the Court deems just and proper.

Dated May 6, 2020.

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